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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,389	09/15/2008	Stefano Colloca	ITR0048YP	4904
210 MERCK P O BOX 2000 RAHWAY, NJ 07065-0907	7590 03/20/2012		EXAMINER PENG, BO	
			ART UNIT 1648	PAPER NUMBER
			MAIL DATE 03/20/2012	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Corrected  
Notice of Allowability***

**Application No.**

10/587,389

**Examiner**

BO PENG

**Applicant(s)**

COLLOCA ET AL.

**Art Unit**

1648

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/16/12.
2. ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
3. ☒ The allowed claim(s) is/are 1,6,8,44-46 and 48-52.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other the office action.

/BO PENG/  
Primary Examiner, Art Unit 1648

### DETAILED ACTION

1. The examiner has determined to vacate the Office action and Notice of Allowance, dated March 8, 2012. A new Office action and an Examiner's Amendment are as set forth below.
2. This Office action is in response to the amendment filed on February 16, 2012. Claims 1, 6, 8, 44-46 and 48-52 are pending and are considered in this Office action.

#### *Claim Objection*

3. **(Prior objection-withdrawn)** The objection to Claim 1 for lacking clarity **is withdrawn** in view of the Examiner's amendment set forth below.
4. **(Prior objection-withdrawn)** The objection to Claim 49 for containing a typo **is withdrawn** in view of the amendment to the claim.

#### *Claim Rejections - 35 USC 112, second paragraph*

5. **(Prior rejection-withdrawn)** The rejection of Claims 6, 8, 43-46 and 48-50 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, **is withdrawn** in view of the Examiner's Amendment as set forth below.

#### *Claim Rejections - 35 USC 112*

6. **(Prior rejection withdrawn)** The rejection of Claims 1, 6, 8, 44-46 and 48-50 under 35 USC 112, first paragraph, for failing to comply with deposit rules of the biological material of ChAd3, **is withdrawn** in view of the amendment to the claim and Applicant's argument. Claim 1

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has amended to be directed to Ad vector comprising SEQ ID NO:1 (genomic sequence of ChAd3). In view of the amendment, the rejection is therefore withdrawn. The rejection of Claim 43 is moot in view of the cancellation of the claim.

### EXAMINER'S AMENDMENT

7. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

8. Authorization for this Examiner's Amendment was given in a telephone interview with Applicant's representative Alysia Finnegan on March 6, 2012, and March 16, 2012.

9. Amend Claims 1, 6 and 50 as set forth below:

Claim 1. A recombinant chimpanzee adenoviral vector (ChAd) comprising ~~a the~~ sequence of ~~nucleotides derived from of~~ SEQ ID NO: 1, wherein the vector has a deletion or a functional deletion of in the E1 gene in SEQ ID NO:1 and lacks E 1 activity; and wherein the vector optionally has a deletion or functional deletion in one or more of the E2, E3, or E4 genes in SEQ ID NO:1.

Claim 6. The recombinant ChAd vector of claim 1 which comprises a deletion/~~disruption or a~~ functional deletion in the E1 ~~nucleotide sequence in the region~~ gene from bp 460 to bp 3542 of SEQ ID NO: 1.

Claim 50. The isolated host cell of claim 44, wherein the host cell is a 293 cell ~~or a cell as deposited with the ECACC under accession number 96022940~~ and wherein the cell propagates the recombinant adenoviral vector.

10. Accordingly, Claims 1, 6, 8, 44-46 and 48-52 are pending and allowable.

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*Specification*

11. Please cancel or (do not enter) the amendment to the specification, filed on February 16, 2012. The insert statement “as deposited with the ECACC under accession number 96022940” is not a part of the application. Therefore, the amendment to the specification, filed on February 16, 2012, is not entered.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BO PENG, Ph.D. whose telephone number is (571)272-5542. The examiner can normally be reached on Tu-Fri, 8:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor Zachariah Lucas can be reached on 571-272-0905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/BO PENG/  
Primary Examiner, Art Unit 1648